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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 717

THE UNITED STATES OF AMERICA, AS GUARDIAN OF THE INDIANS OF THE TRIBE OF HUALPAI IN THE STATE OF ARIZONA,

Petitioner,

vs.

SANTA FE PACIFIC RAILROAD COMPANY, A CORPORATION,

Respondent.

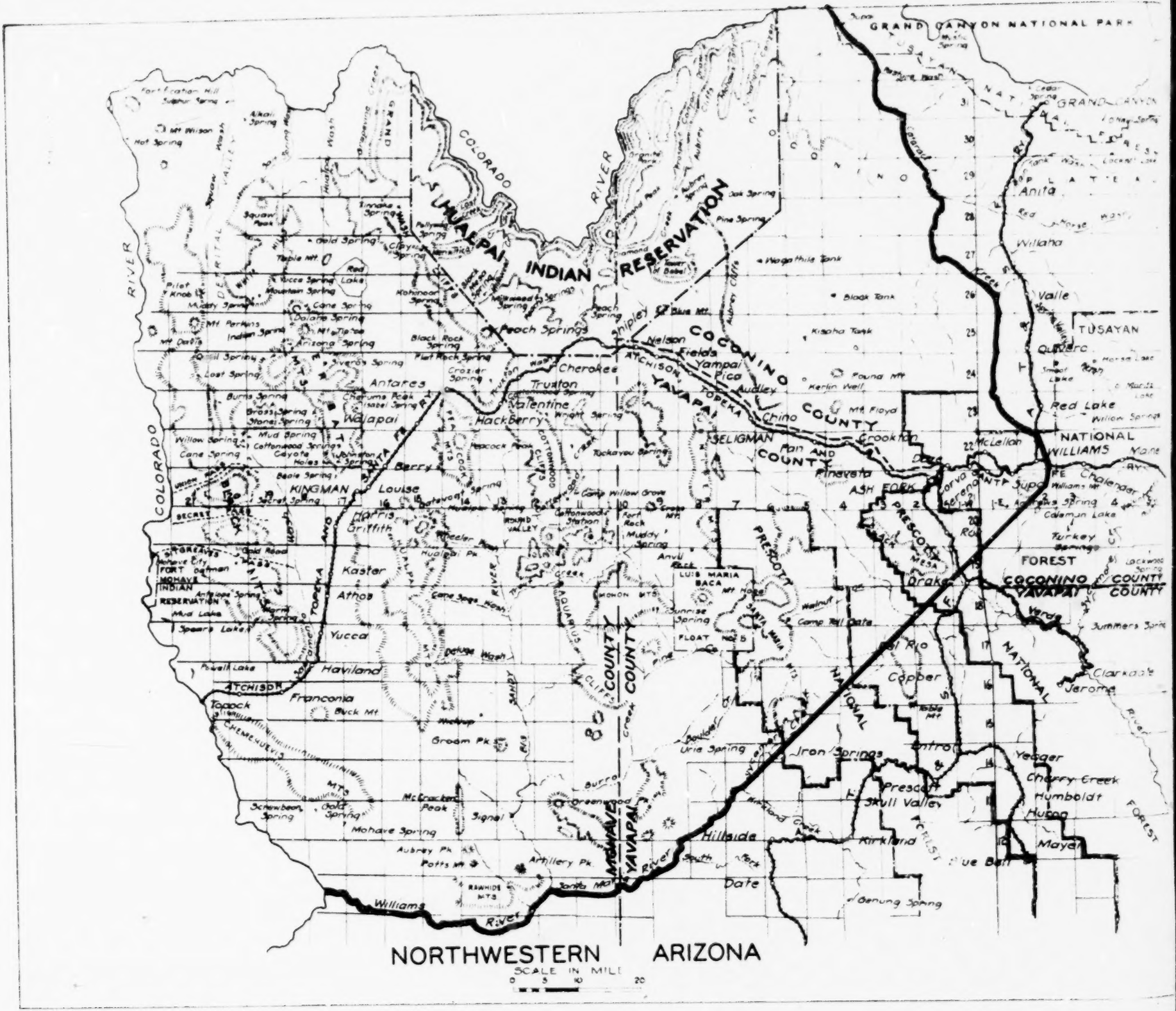
BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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February 15, 1941.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO


GRAND CANYON NATIONAL PARK
HAVASUPAI INDIAN RESERVATION
COCONINO COUNTY
YAVAPAI COUNTY
MOHAVE COUNTY
COLORADO RIVER
GRAND CANYON
Anita
Willaha
Valle
TUSAYAN
Red Lake
NATIONAL FOREST
WILLIAMS
Peach Springs
Nelson
Fields
Yampai
Pica
Cherokee
Truxton
Antares
Valentine
Hackberry
Walapai
Kingman
Louise
Harris
Griffith
Kaster
Athob
Yucca
Haviland
Franconia
Topock
Chemehuevi Mts
Broom Pk
Mohave Spring
Aubrey Pk
Potts Mt
Artillery Pk
Rawhide Mts
Williams River
Seligman
Chino
Prescott
Ash Fork
Crookton
Pinavata
Drake
Copper
Jerome
Clarkdale
Jerome Junction
Iron Springs
Prescott
Skull Valley
Kirkland
Hillside
Date
Cherry Creek
Humboldt
Mayer
Yeager
Summers Spring
Red Horse Wash
Mt Floyd
Kerlin Well
Kisaha Tank
Wigwam Tank
Black Tank
Mt Wilson
Hot Spring
Mt Perkins
Mt Tipton
Mt Davis
Triple Mt
Squaw Peak
Pilot Knob
Mt Floyd
Mt Tom
Mt Union
Mt Hope
Mt Vernon
Mt Wallapai
Mt Hope
Mt Union
Mt Wallapai

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Petitioner,

vs.

SANTA FE PACIFIC RAILROAD COMPANY, A CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

INTRODUCTORY STATEMENT.

Petitioner, styling the action a "suit to quiet title and for an accounting," (R. 2) alleged:

> In the first cause of action, that it is the owner of all lands within the Walapai Indian Reservation and that Respondent claims the odd-numbered sections (R. 3, 5-7).
>
> In the second cause of action, that it is the owner of adjacent territory (R. 10), bounded on the west and north by the Colorado River, and on the east and south by the heavy line on the map hereto attached, excluding the Walapai and Mohave reservations (R. 11-14). Patented odd-numbered sections are claimed by Respondent; and the patents are sought to be set side (R. 19), with accounting for sales and profits arisin from use (R. 20).

Respondent moved to dismiss (R. 24-26); and its motion was supported by the theory (R. 24, 84) that pleadings judicially known to be untrue are not well pleaded, *Arizona* v. *California*, 283 U. S. 423, *Nev-Cal Electric Securities Co.* v. *Imperial Irrigation District*, 85 F. (2d) 886, 904-6 (certiorari denied, 300 U. S. 662). In the manner described as appropriate by this Court, *Ohio Bell Tel. Co.* v. *Commission*, 301 U. S. 292, the Trial Court's attention was directed to matters of public and historic record (R. 26-189). The Trial Court dismissed the case (R. 191-6), and the Circuit Court of Appeals affirmed (R. 204-14, 114 F. (2d) 420).

Within the exterior bounds of the lands in issue is about one-eighth of Arizona, and such towns as Williams, Ash Fork, and Seligman. Possession in fact of this vast area, and exclusive possessory right, are alleged on behalf of Indians numbering about four hundred and fifty.[1]

Petitioner conceded below that the right of the United States to the lands in question was originally absolute and that Walapai rights depended upon the laws and policy of the United States.[2] In the Trial Court, Petitioner con-

1. Lieutenant Colonel Brayton's census of 1888 showed 646, living at various places, working for white people, a few cultivating gardens (*Walapai Papers*, 165-8). In 1924 the Board of Indian Commissioners reported that the "population of 440 Walapai Indians, with the exception of a few families, live in towns scattered along the Santa Fe Railroad for a distance of 100 miles. * * *" (Idem, 204.) The same Board reported in 1928: "Principally because of the demand for unskilled labor, the Indians are allowed to remain in their nondescript camps on the edges of town; otherwise the whites undoubtedly would have forced these unprepossessing squatters away from the neighborhood." (Idem, 208.)

2. Finding 2 of the Trial Court reads in part:

"The Walapai were of the savage tribes referred to in the Treaty of Guadalupe Hidalgo, 9 Stat. 922. It is not claimed they were granted lands by Spain or Mexico. Sources and authorities referred to by defendant in support of its points IB and ID, and the sources and authorities referred to in appendix to defendant's original brief, here referred to and made a part hereof, are conclusive that these Indians had no rights to the land in controversy under the laws of Spain and Mexico; and from the brief and argument of plaintiff it is clear that it does not and cannot controvert this point." (R. 192.)

The Circuit Court says:

"Since it is conceded that the title of the United States was absolute, except in certain cases of specific grants, * * *" (R. 207.)

tended for a trial only to enable it to introduce evidence on the issue of the extent and nature of Walapai tribal organization and tribal occupancy; and both the Trial and Circuit Courts held that testimony of such nature could not possibly affect the result (R. 195-6, 212).[3]

The particular background of this litigation pertains almost exclusively to the first cause of action. The discussion since 1919 (Petition, p. 4) related to lands in the first cause; the Senate Committee hearings dealt with those lands (*Walapai Papers*,[4] 239-354); and these proceedings, held in July, 1931, were followed in September and November, 1931, by opinions of the Solicitor for the Interior Department and the Assistant Attorney General (W. P., 318-27) sustaining Respondent's claims. On June 13, 1932, the Senate tabled a resolution introduced by Senator Frazier which would have directed delay in consummation of exchange of first cause lands under the Act of February 20, 1925, 43 Stat. 954;[5] whereupon, on June 17, 1932, Senator Frazier wrote the letter (W. P., 356) so heavily relied upon in explanation of this suit (Petition, pp. 5, 20). The letter relates to no second cause lands; it refers to evidence which is said to indicate that prior to 1866 and March 12, 1872, the Walapai "were in the actual possession and occupancy of *certain of the areas*

3. Official documents referred to in the record are replete with information concerning the Walapai from the earliest times of white contact. Such information is judicially known by the courts. *United States* v. *Sandoval*, 231 U. S. 28. *Lake* v. *United States*, 35 Ct. Cls. 15.

4. References to *Walapai Papers* will hereinafter be abbreviated to W. P.

5. The resolution read:

"Resolved: That the Secretary of the Interior is hereby requested to delay final consummation of the proposed exchange of lands within the Hualpai Indian Reservation with The Atchison, Topeka and Santa Fe Railway Company pursuant to the Act entitled 'An Act to Provide for Exchanges of Government and Privately Owned Lands in the Hualpai Indian Reservation, Arizona,' dated February 20, 1925, pending further investigation of the proposal by the Senate Committee of Indian Affairs and the final disposition until the 72nd Congress has such additional legislation as the committee may recommend in connection therewith." (75 Cong. Rec., Part 14, p. 15175.)

later embraced in their reservation; and that *this Indian title was never extinguished by voluntary cession.* • • •"

Since the field of Indian relations is essentially political, the attitude of the Department of Justice in refusing to participate in this proceeding assumes significance.[6] The position of the United States was recently phrased, and sustained by the Court of Claims, as follows:

> "• • • • the Government never having recognized that these tribes were the possessors of title in any degree to the land now claimed by them, they have no right thereto which can be litigated in this or any other court; that whether or not an Indian tribe has title to any particular section is dependent in the first instance upon sovereign recognition and that until that recognition has been accorded by the sovereign the entire matter rests in the realm of politics and is not determinable in a court of law or equity.'" *Duwamish, et al. Indians* v. *United States*, 79 Ct. Cls. 530, 597; also 606-7, certiorari denied, 295 U. S. 755. See also *Coos Bay Indian Tribe, et al.* v. *The United States*, 87 Ct. Cls. 143, 152-3, certiorari denied, 306 U. S. 653; and Record, pp. 145-190.

This position of the Department of Justice is the recorded position of the Chief Executive with respect to the lands of the Mexican Cession (R. 99-109).[7]

Recent Development Affecting First Cause Lands.

Since the opinion of the Circuit Court of Appeals was rendered, Respondent has, pursuant to Section 321(b) of the Transportation Act of 1940, filed a release of all lands

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6. In his motion herein for extension of time, the Solicitor General recites that "the Department of Justice, in opposing Indian claim suits, has taken the opposite position in the Court of Claims that there is no Indian right of aboriginal possession which will ground a claim against the United States." (R. 215-216.)

7. The opinion of Interior Department Solicitor Mr. Margold, 54 I. D. 359, 370, reads in part:

> "It follows that the question of the appropriate manner of protecting the Papagos in their possession was, and still is, a matter exclusively of political cognizance. • • • The present measure of the legal rights of the Papagos is the Executive order of February 1, 1917, as modified by the Act of February 21, 1931."

involved in the first cause of action, has received a letter from the First Assistant Secretary of the Interior requesting an Indenture of further assurance, and has furnished the document requested. A certified copy of the documents and correspondence is being lodged with the Clerk of the Court; and an uncertified copy is printed as an Appendix to this brief, with copy of the section of the Transportation Act of 1940 referred to.

Question Presented.

The issue is whether there can be an Indian tribal right to Arizona lands, not within a reservation, such as will prevail against the purchaser of the title of the United States' grantee.

REASONS FOR DENYING THE WRIT.

I. The Court Below Applied Principles of Law Settled Many Times by Direct Decision of This and Inferior Courts.

The Court below in effect held that, though the political authorities had once customarily created Indian possessory rights in other sections coextensive with possession, they had not done so in the particular lands here in question; also, that if a mere possessory right had been created, the political policy of opening the country to settlement and development and assigning Indians to reservations and controlling them in the interest of that policy, the while disposing of the Indians' ancient hunting grounds, had destroyed that right. These holdings are in strict accord with the decisions of this Court and the lower Federal Courts.

In *Barker* v. *Harvey*, 181 U. S. 481, 492, this Court held:

> "Again, it is said that the Indians were, prior to the cession, the wards of the Mexican government, and by the cession became the wards of this government; that, therefore, the United States are bound to protect their interests, and that all administration, if not all legislation, must be held to be interpreted by, if not subordinate to, this duty of protecting the interests of the wards. It is undoubtedly true that this government has always recognized the fact that the Indians were its wards, and entitled to be protected as such, and this court has uniformly construed all legislation in the light of this recognized obligation. But the obligation is one which rests upon the political department of the government, and this court has never assumed, in the absence of Congressional action, to determine what would have been appropriate legislation, or to decide the claims of the Indians as though such legislation had been had. Our attention has been called to no legislation by Congress having special reference to these particular Indians."

See also, *United States* v. *Title Ins. & Trust Co.*, 265 U. S. 472, and briefs therein. Political recognition is necessary to the creation of legal Indian possessory right, *Barker* v. *Harvey, supra*, *Hayt* v. *United States*, 38 Ct. Cls. 455, *Duwamish et al. Indians* v. *United States*, 79 Ct. Cls. 530, certiorari denied, 295 U. S. 755, *Coos Bay Indian Tribe et al.* v. *The United States*, 87 Ct. Cls. 143, 152-3, certiorari denied, 306 U. S. 653; so withdrawal of recognition evidenced by a grant of lands, inconsistent with Indian right, *Missouri, Kansas & Texas Ry. Co.* v. *Roberts*, 152 U. S. 114, *Kindred* v. *Union Pacific R. R. Co.*, 225 U. S. 582, *Conley* v. *Ballinger*, 216 U. S. 84, *Super* v. *Work*, 3 F. (2d) 90, 271 U. S. 643, by a crowding out of Indians and granting of titles to white people, *Johnson* v. *McIntosh*, 8 Wheat. 543, or even by long acquiescence by Congress and the Executive in the possession of others, *Shoshone Tribe* v. *United States*, 299 U. S. 476, 495-6, *United States* v. *Creek Nation*, 295 U. S. 103, 110, or otherwise, destroys Indian right. "Save to the extent that Congress may authorize, the Government's dealings with Indian tribes are not subject to judicial review." *Klamath Indians* v. *United States*, 296 U. S. 244, 255. "* * * the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, * * *." *Beecher* v. *Wetherby*, 95 U. S. 517, 525. "These are political, not judicial powers." *Sioux Indians* v. *United States*, 277 U. S. 424, 436. The titles created by political act are sacred in a court, but only because they have been so created, and only so long as they exist. The latest decision of this Court is *United States* v. *Northern Pacific Ry. Co., et al.*, pages 19-20, decided December 16, 1940, 85 L. Ed. 241, 255-6.

II. The Decision Below Is Not in Conflict With Any Decisions of This Court.

None of the cases cited by Petitioner is in conflict with the principles of law applied by the Court below. None of them holds that the United States was compelled to vest, or did vest, a legal title in all tribal Indians. None of them hold that because by statute or treaty Indians in one section have been given certain privileges or rights, Indians in other sections have the same or similar privileges or rights without being accorded them by political action.

A number of these cases dealt with rights of Indians established by treaties;[8] *Northern Pacific Ry. Co.* v. *Wismer*, 246 U. S. 283, decided the time and effect of creation of an executive order reservation; similarly, *Wilcox* v. *Jackson*, 13 Pet. 498, held that the establishment of certain reservations (for Indian, military, and lighthouse purposes) removed the reserved lands from the operation of the preemption laws.

In *Buttz* v. *Northern Pacific R. R. Co.*, 119 U. S. 55, Indian occupancy right was not in issue;[9] its existence was an apparently uncontested premise: "The land in controversy * * * was within what is known as Indian country." (p. 66.) This Court held that the railroad had the fee title under its grant. See also *United States* v. *Northern Pacific Ry. Co.*, decided December 16, 1940 (pp. 19-20), 85 L. Ed. 241, 255-6. The Indians in each of these cases had been parties to treaties to which other tribes and the United States were parties; and additionally they were in statutory "Indian Country."

8. *Worcester* v. *Georgia*, 6 Pet. 515; *Mitchel* v. *United States*, 9 Pet. 711; *United States* v. *Cook*, 19 Wall. 591; *Beecher* v. *Wetherby*, 95 U. S. 517; *Spalding* v. *Chandler*, 160 U. S. 394; *Minnesota* v. *Hitchcock*, 185 U. S. 373; *Leavenworth, Lawrence & Galveston R. R. Co.* v. *United States*, 92 U. S. 733.

9. The claim that "Indian right of occupancy was protected and enforced" by this decision (Petitioner's brief, 9, note 3) is not substantiated. The issue was between the railroad and a settler.

United States v. *Sandoval*, 231 U. S. 28, settled a question of the wardship of Indians who enjoyed property rights by confirmed Spanish grant; and neither *Lane* v. *Pueblo of Santa Rosa*, 249 U. S. 110, nor *Pueblo of Santa Rosa* v. *Fall*, 273 U. S. 315, turned upon such a question as is at issue here.

Cramer v. *United States*, 261 U. S. 219, held that an individual family of Indians who had abandoned all tribal relations pursuant to the policy of the government to break up the tribal status wherever possible and encourage individual agricultural pursuits, were protected against a railroad grant to the extent of approximately 150 acres actually cultivated and fenced but no further. This case has no relevance to tribal rights or claims.

Johnson v. *McIntosh*, 8 Wheat. 543 (1823), established, against a background of legislative acts, that a purported conveyance by Indian tribes northwest of the Ohio River was not effective to transfer a title of any kind. The Court wrote an extended essay searching for a universal principle behind legislative action; but it held that the rule of decision which "our own government has adopted in the particular case, and given us as the rule for our decision," (p. 572) must be applied. All nations of Europe "have asserted * * * the exclusive right of the discoverer to appropriate the lands occupied by the Indians." (p. 584.) The United States, as early as 1823, had exercised its conqueror's power as far west as the Mississippi (1) by the sword and (2) by permitting Indians to be crowded out and subsequently parceling out the lands. "It is not for the courts * * * to question the validity of this title, or to sustain one which is incompatible with it." (p. 589.)

Neither the foregoing nor any other decisions establish that Indian possession gives legal possessory rights which the sovereign has not seen fit to accord, and which prevail

after the sovereign has manifested its will that no such rights shall exist.

III. The Decision of the Court of Appeals Is Correct.

(A Reply to Petition, pp. 10-19.)

The miscellany offered by the Petitioner to show substantive error (petition, pp. 10-19) can not avoid the doctrine that whether or not the Walapai were to be given possessory rights, and if given them were to be allowed to retain them, were political questions. As respects much of the land acquired in the Louisiana and Florida purchases, Indian rights had been established by predecessor sovereigns. In the treaties of cession, established rights were agreed to be preserved, and were preserved. *Mitchel* v. *United States*, 9 Pet. 711, 754. The concession of property rights by the Spanish Monarch to the wild Indians was a thing "which had not before been done in any of his dominions." (Idem, p. 753.) The pretentions to land right which the Indians of the Louisiana Purchase had been able to force the Spanish Monarch to transmute into legal right were "pretensions that the Spanish government notoriously disregarded, further than a cautious policy required. [*Marsh* v. *Brooks*, 14 How. 513, 523 (1852).] It is well known, as conceded by Petitioner below, that in the lands of the Mexican Cession savage Indians (*Salvajes: Indios barbaros*) were never accorded land right. See *United States* v. *Lucero*, 1 N. Mex. 422, 430-431; *Haut* v. *The United States*, 38 Ct. Cls. 455, 461; R. 33-36, 99-109.

Even should it be assumed that the Walapai had possessory rights under Spanish and Mexican law, the question of what rights they were to have under United States rule was nevertheless political. The promise to respect property of Mexicans in ceded territory (Art. VIII, Treaty of Guadalupe Hidalgo, Appendix to Petitioner's brief, p. ii) was a covenant by the United States with Mexico. The

Congress was free to execute that covenant, condition its performance, or repudiate it, without interference from the Judiciary. Congress proceeded in its own time and way to determine what claims to Arizona land would, and what claims would not, be respected. *Lockhart* v. *Johnson*, 181 U. S. 516. What it did binds the courts. *Botiller* v. *Dominguez*, 130 U. S. 238, 247, *La Abra Silver Mining Co.* v. *United States*, 175 U. S. 423, 460.

The policy of Congress, continually manifest, was to open the entire Cession, except reservations, to white exploitation and development. Thus, the Act of 1854 (10 Stat. 308) offered every acre of Arizona land outside of reservations as a free gift to white settlers;[10] and the grant to the railroad and the policy toward Indians were all dictated by the purpose to Americanize the ceded territory. The policy toward Indians was to confine them to reservations set aside for their use, employing force if need be. Railroad construction was looked upon as an aid to the military in protecting white settlers and forcibly reconciling Indians to the policy of Congress (R. 45-49).

There can be no doubt that the 1865 reservation was created under this policy for the Walapai.[11] They were forced upon it and ran away. They were not forced back;

10. Petition, Appendix, pp. v-ix. This act offered all of Arizona (Sec. 2) with the exception of reservations (Sec. 4) as donations to settlers. All lands not taken under other provisions were made *subject to the operation of the Preemption Act* (Sec. 7).

Petitioner argues that since the Preemption law did not operate upon lands, the Indian title to which had not been extinguished, that the Act of 1854 in effect provided, not that lands would be *subject to the operation* of the Preemption law, but would *not be subject to its operation*, and gave Indians title to Arizona lands. This inverted reasoning (1) does violence to plain intent, (2) overlooks the contrast of Section 12, which made *subject to the operation* of the preemption law only Kansas and Nebraska lands *to which the Indian title has been or shall be extinguished*, and (3) ignores the main feature of the Act, the offer of all lands outside reservations as gifts to settlers.

11. Mr. Poston's account to Congress of his council with the "tribes of the Colorado," including "Hualapais," appears, R. 130-37. He was at the time Territorial Representative, and speaking on the appropriation bill which created the 1865 reservation. See also *Walapai Papers*, p. 33, for contemporary official recognition that the Walapai were of the tribes for which the reservation was created.

but in the meanwhile their old hunting grounds had been settled by white people. The President attempted to give them a reservation in 1883, because they had no place to live save the unsuitable reservation of 1865 (W. P., 134-5, 146).

A summary of the policy is given in *Lockhart* v. *Johnson*, 181 U. S. 516:

> "Public lands belonging to the United States, for whose sale or other disposition Congress has made provision by its general laws, are to be regarded as legally open for entry and sale under such laws, unless some particular lands have been withdrawn from sale by Congressional authority or by an executive withdrawal under such authority, either express or implied." (P. 520.)
>
> "* * * Whatever reservation there is must be looked for in the statutes of the United States * * *." (P. 523.)

This land policy resulted in the institutional organization of Arizona. The tax resources, as well as political power, of the Territory and State, were vitally affected by the extent of "Indian country." That Arizona, outside reservations, was not "Indian country" is confirmed by the Enabling Act (June 20, 1910, 36 Stat. 557) and the State Constitution. The Enabling Act required Arizona State to disclaim all power, proprietary and political, to

> "* * * all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, * * *"

and provided that the United States retained full proprietary and political power to such lands "until the title of such Indian or Indian tribes shall have been extinguished." Accordingly, "Indian country" in Arizona is composed entirely of "reservations" created by the United States or some predecessor sovereign.

The policy to create new and preserve old taxable

wealth, to sustain Arizona institutions, was for a time obstructed by additions of lands to Indian reservations by Executive order. This practice was forbidden by the Act of May 25, 1918 (40 Stat. 561, at 570, Title 25, Sec. 211, U. S. C. A.; Legislative history, R. 120-25), providing "That hereafter no Indian reservation shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress." Thus did Congress announce again that Indian rights shall be confined to reservations, and prohibit what is sought to be accomplished in this action, namely, the extension of an existing one. This act alone is a complete answer to the Petitioner.

We omit all further details of legislation and administration. They are voluminous, not intricate, and lucidly expressive of the policy of the Congress, summarized by Mr. Kappler:

> "In regard to land acquired by the United States from Spain and Mexico, the Indian right of occupancy is not recognized, except where recognized by Spanish and Mexican Governments prior to cession to the United States, or where the United States gave rights to the Indians within the ceded territories by treaty, act of Congress, or executive order, after cession, or by treaty or act of Congress recognized that Indians within these ceded territories possessed such rights of occupancy or possession." (IV Kappler, *Indian Affairs, Laws and Treaties*, Senate Document 53, 70th Congress (1929), pp. 1170-71.)

Conclusion.

Petitioner's theory, which it seeks to have adjudicated, is important only in the sense that any effort would be important which sought to reverse the plain meaning of laws, ignore over ninety years of harmonious administration thereof, and overturn judicial decisions, pursuant to all of which private titles in the Mexican Cession if not the

entire west are vested, and political and social institutions are builded. Every acre of Arizona and New Mexico was once occupied by wild Indians just as much as the lands here in dispute (R. 93); and there was Indian "cession" of none of it. *Hayt* v. *United States*, 38 Ct. Cls. 455.

We respectfully submit that there is nothing in the case which warrants granting of a writ.

Respectfully submitted,

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February 15, 1941.

APPENDIX.

(Public—No. 785—76th Congress)

(Chapter 722—3d Session)

(S. 2009)

AN ACT

To amend the Act to regulate commerce, approved February 4, 1887, as amended, so as to provide for unified regulation of carriers by railroad, motor vehicle, and water, and for other purposes.

TITLE III—MISCELLANEOUS

Part II—Rates on Government Traffic

SEC. 321. (a) * * *

(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the rai[illegible] operated by it, the provisions of law with respect to [illegible]ensation for such transportation shall continue to ap[illegible]o such transportation as though subsection (a) of [illegible]is section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully

and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

Approved, September 18, 1940.

RELEASE

Santa Fe Pacific Railroad Company, a corporation organized and existing by virtue of an Act of Congress approved March 3, 1897 (29 Stat. 622), with office and principal place of business at New York, in the State of New York, hereby, in accordance with section 321 of Part II of Title III of the Transportation Act of 1940, and the rules and regulations issued thereunder by the Secretary of the Interior, relinquishes, remises and quitclaims to the United States of America any and all claims of whatever description to lands, interests therein, compensation or reimbursement therefor on account of lands or interests granted, claimed to have been granted, or claimed should have been granted by any act of the Congress to Santa Fe Pacific Railroad Company or to any predecessor in interest in aid of the construction of any portion of its railroad.

This release does not embrace the rights of way or station grounds of this company, lands sold by the company to innocent purchasers for value prior to September 18, 1940, lands embraced in selections made by the company and approved by the Secretary of the Interior prior to September 18, 1940, or lands which have been patented or certified to the company or any predecessor in interest in aid of the construction of its railroad.

IN WITNESS WHEREOF, Santa Fe Pacific Railroad Company has caused this Release to be signed in its corporate name and acknowledged or proved by its President and its corporate seal to be hereunto affixed and the same to be attested by the signature of its Secretary, this 17th day of December, 1940.

SANTA FE PACIFIC RAILROAD COMPANY,
By (Sgd) E. J. ENGEL,
Its President.

(SEAL)

Attest:
(Sgd) R. M. HOGIN,
Its Secretary.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } ss.

On this 17th day of December, 1940, before me, the undersigned _____, a notary public within and for the county aforesaid, appeared E. J. Engel and R. M. Hogin, to me personally known, who, being by me severally and duly sworn, did say that he, the said E. J. Engel, is the President, and he, the said R. M. Hogin, is the Secretary, of Santa Fe Pacific Railroad Company, the corporation which executed the foregoing instrument, and that the seal affixed thereto is the corporate seal of said corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said E. J. Engel, as President as aforesaid, and the said R. M. Hogin, as Secretary as aforesaid, acknowledged before me the said instrument to be the free act and deed of said corporation, and acknowledged that they, as President and Secretary respectively, executed the said instrument on behalf of said corporation for the purpose and consideration therein expressed.

WITNESS my hand and notarial seal this _____ day of December, 1940.

_____
Notary Public.

My commission expires _____

(NOTE:—Details of execution of the foregoing acknowledgment were not available at time of printing, but will appear on certified copy which will be furnished as soon as received.)

LAND DIVISION.

Jan. 4, 1941

Hon. Fred A. Johnson,
Commissioner of the General Land Office.

MY DEAR MR. JOHNSON:

This will refer to the releases of land grant claims filed by the Atchison, Topeka and Santa Fe Railway Company and the Santa Fe Pacific Railroad Company, pursuant to the Act of September 18, 1940 (Public No. 785—76th Congress), and the regulations prescribed thereunder.

The statute provides that if a land grant railroad desires to receive the benefit of the Act, it is required to file with the Secretary of the Interior in the form and manner prescribed by him, a release of any claim it may have to lands, interests in lands, compensation or reimbursement on account of lands or interests in lands so granted, claimed to have been granted or claimed should have been granted. The Act does not require the reconveyance of land already patented or certified or prevent the issuance of patents for land listed or selected where the listing or selection was fully and finally approved by the Secretary of the Interior prior to September 18, 1940, to the extent that the issuance of such patents may be authorized by law.

The odd numbered sections of land within the Walapai Indian Reservation, Arizona, are unpatented and are not within the exceptions to the aforesaid Act, but said sections are claimed by the Santa Fe Pacific Railroad Company, which claim is now being contested by the United States in the Courts. The Act does require the Railroad to release its claim to such sections if it intends to receive the benefits of said Act.

It is assumed by this Office that the releases submitted do cover the odd numbered sections of land within the Walapai Indian Reservation. Otherwise there would appear to be an evasion of compliance with the specific language contained in the Act. Therefore, to avoid any controversy in the future as to whether the releases cover the odd numbered sections of land in the Walapai Indian Reservation, it is requested that any official action by your office, relative to accepting the releases, be held in abeyance and that the Companies be required to indicate formally, in writing, that the odd numbered sections of land within the

Walapai Indian Reservation are covered by the releases tendered.

Sincerely yours,
(Signed) JOHN COLLIER,
Commissioner.

JMS:ds
1-3-41

cc: Mr. Lawrence Cake,
Local Representative Santa Fe
Pacific Railroad Company,
Woodward Building.
Washington, D. C.

LAWRENCE CAKE

WASHINGTON, D. C.
January 6, 1941.

The Commissioner of the General Land Office,
Washington, D. C.

SIR:

Referring to informal conference with Mr. Havell regarding the release of land-grant claims filed by the Santa Fe Pacific Railroad Company in accordance with Section 321, Part II, Title III of the Transportation Act of 1940 and the regulations thereunder promulgated in Circular No. 1480, and to letter dated January 4, 1941 from the Commissioner of Indian Affairs regarding the attitude of the company toward the unpatented odd-numbered sections within the Walapai Indian Reservation, I have to advise that I have communicated with the company and have been informed that the lands in question within the Walapai Reservation are intended to be and are included in the release which has been filed. I was given this assurance by telephone on Saturday and later I received the enclosed telegram from Charles H. Woods, General Solicitor, Santa Fe Pacific Railroad Company.

Respectfully,
(Signed) LAWRENCE CAKE.

Enc:

UNITED STATES DEPARTMENT OF THE INTERIOR.

Office of the Secretary,
Washington.

Jan. 15, 1941.

Charles H. Woods, Esquire,
General Solicitor,
The Atchison, Topeka and Santa Fe Railway System,
1211 Railway Exchange,
Chicago, Illinois.

MY DEAR MR. WOODS:

On December 18, you, together with Lawrence Cake, Esquire, filed releases of land grant claims executed on December 17 by the Atchison, Topeka and Santa Fe Railway Company and the Santa Fe Pacific Railroad Company under Section 321(b), Part II, Title III, Transportation Act of 1940, and Circular No. 1480, the regulations governing such releases. The Santa Fe Pacific Railroad Company owns the land grant involved, and the Railway Company *supra* operates the line of railroad and owns the Railroad Company. The land grant has not been adjusted and closed.

The Railroad Company has filed a list containing the names of all innocent purchasers of unpatented lands prior to September 18 together with a description of such lands. Section 273.65(c). The Land Commissioner of the company made affidavit on December 12 that other than the lands in the above list no unpatented grant lands have been sold or are otherwise encumbered.

Where a grant has not been finally adjusted and closed, the release must be recorded in each county where the released lands or interests are situated. Section 273.65 (d), Circular No. 1480. Also, the release should be supported by certificates from the county officers to the effect that there are no tax or mortgage liens or other encumbrances of record affecting any of the lands reconveyed to the United States. Section 273.65(e), Circular No. 1480.

The release of the Santa Fe Pacific Railroad Company is enclosed herewith in order that it may be recorded in conformity with Section 273.65(d), Circular No. 1480.

For the purpose of the record it is requested that the companies file in this Department a document executed and acknowledged by an authorized officer or officers of

the companies, acknowledging and certifying that the releases heretofore submitted are intended by the companies to, and do, relinquish and quit claim to the United States of America, among other lands, all unpatented lands of the companies, or claimed by the companies under the act of July 27, 1866 (14 Stat. 292), within the Walpai Indian Reservation in Arizona, and which are included in the case of *United States* v. *Santa Fe Pacific Railroad Company*, pending in the Federal Courts.

Upon the return hereof, with evidence of recordation and the evidence required by Section 273.65(e), and the preceding paragraph hereof, the matter of the approval of the release will be given prompt consideration.

Sincerely yours,

(Sgd) OSCAR L. CHAPMAN,
Assistant Secretary.

Enclosure 59772.

INDENTURE OF FURTHER ASSURANCE.

INDENTURE of further assurance made this 23d day of January, 1941, by SANTA FE PACIFIC RAILROAD COMPANY, a corporation organized and existing under and by virtue of an act of Congress approved March 3, 1897, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of Kansas (hereinafter sometimes collectively called Companies).

WHEREAS, Companies did on the 18th day of December, 1940, file with the Secretary of the Interior of the United States of America releases of land grant claims executed by them, respectively, on the 17th day of December, 1940, under Section 321(b), Part II, Title III, of the Transportation Act of 1940, and Circular No. 1480, the regulations governing such releases, and

WHEREAS, said Secretary of the Interior, by letter of Oscar L. Chapman, Assistant Secretary, dated January 15, 1941, has requested Companies to execute and acknowledge by an authorized officer or officers an instrument acknowledging and certifying that the releases heretofore submitted were intended by Companies to, and do, relinquish and quitclaim to the United States of America, among other lands, all unpatented lands of Companies, or claimed by Companies under the act of July 27, 1866 (14 Stat. 292), within the Walapai Indian Reservation in Arizona, and

which are included in the case of *United States* v. *Santa Fe Pacific Railroad Company* (114 Fed. (2d) 420), pending in the Federal Courts:

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of the premises and for the purpose of further complying with said Section 321 (b), Part II, Title III, of the Transportation Act of 1940, and Circular No. 1480, SANTA FE PACIFIC RAILROAD COMPANY and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY do each hereby acknowledge and certify that the said releases filed with the Secretary of the Interior of the United States of America on December 18, 1940, were intended to, and do relinquish and quitclaim to the United States of America, among other lands, all unpatented lands of Companies, or claimed by Companies under the act of July 27, 1866 (14 Stat. 292), within the Walapai Indian Reservation in Arizona, and which are included in the case of *United States* v. *Santa Fe Pacific Railroad Company* (114 Fed. (2d) 420), pending in the Federal Courts.

IN WITNESS WHEREOF each of the said Companies has caused these presents to be executed in quadruplicate by its officer thereunto duly authorized, its corporate seal to be hereunto affixed and attested by its Assistant Secretary this 23rd day of January, 1941.

SANTA FE PACIFIC RAILROAD COMPANY,
By (Sgd.) E. J. ENGEL,
President.

(SEAL)

Attest:
(Sgd.) G. L. GARVER,
Assistant Secretary.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.
By (Sgd.) E. J. ENGEL,
President.

(SEAL)

Attest:
(Sgd.) G. L. GARVER,
Assistant Secretary.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

On this 23rd day of January, 1941, before me, the undersigned Oscar M. Carlson, a notary public within and for the county aforesaid, appeared E. J. Engel and G. L. Garver, to me personally known, who, being by me severally and duly sworn, did say that he, the said E. J. Engel, is the President, and he, the said G. L. Garver, is the Assistant Secretary, of Santa Fe Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, the corporations which executed the foregoing instrument, and that the seals affixed thereto are the corporate seals of said corporations, and that the said instrument was signed and sealed in behalf of said corporations by authority of their Boards of Directors; and the said E. J. Engel, as President as aforesaid, and the said G. L. Garver, as Assistant Secretary as aforesaid, acknowledged before me the said instrument to be the free act and deed of said corporations, and acknowledged that they, as President and Secretary respectively, executed the said instrument on behalf of said corporations for the purposes and consideration therein expressed.

Witness my hand and notarial seal this 23rd day of January, 1941.

(Sgd.) OSCAR M. CARLSON,
Notary Public.

My commission expires October 28, 1942.